

# Review of Referee's Recommended Findings and Conclusions

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## 13.1 Hearings a Referee May Conduct

The Family Division may assign a referee to conduct the following types of proceedings in delinquency cases:

- F a preliminary inquiry;
- F a preliminary hearing;
- F a nonjury trial;
- F a dispositional hearing; and
- F any other type of hearing other than a jury trial and a “traditional” waiver hearing.

MCR 5.913(A)(1). However, except for status offender cases, the referee must be a licensed attorney or must have been acting as a referee prior to January 1, 1988, to be eligible to conduct proceedings other than preliminary inquiries or preliminary hearings. MCR 5.913(A)(2) and MCL 712A.10(2); MSA 27.3178(598.10)(2).

In designated cases, referees who are licensed attorneys may conduct hearings to designate a case or hearings to amend a petition to designate a case. MCR 5.913(A)(4).\*

\*See Sections  
16.19 – 16.23.

## 13.2 Required Findings That Must Be Made by Referees

MCL 712A.10(1)(c); MSA 27.3178(598.10)(1)(c), and MCR 5.913(A)(1) provide that if a delinquency case requires a hearing and the taking of testimony, the referee shall make a written signed report to the judge containing a summary of the testimony taken and a recommendation for the court's findings and disposition.\*

\*See Forms JC 09  
(preliminary  
hearing) and  
JC 13 (trial).

In designated cases, a referee who presides at a hearing to designate a case or to amend a petition to designate a case must also make recommended findings and conclusions. MCR 5.913(A)(4).

### 13.3 Advice of Right to Seek Review Following Dispositional Hearing

\*See Form JC 42.

MCR 5.913(C) states that at the conclusion of the dispositional hearing in a delinquency case, the referee must inform the minor, the parent, and the respondent of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 5.991(B).\*

### 13.4 Required Review

A judge of the court shall review the referee's recommended findings and conclusions when requested:

\*See Section 6.5 (definition of formal calendar).

(1) by a party in a case on the formal calendar heard by a referee;\*

\*See Sections 7.15.

(2) by a juvenile or petitioner from the determination as to bail or probable cause to support detention;\*

\*See Chapter 12, Part II.

(3) by a party from the determination as to placement;\* or

(4) to avoid manifest injustice in any case.

MCR 5.991(A)(1)–(4). See also MCR 5.903(A)(13) (petitioner, juvenile, and parent are parties).

**NOTE:** The 1988 Staff Comment following MCR 5.993 states that MCR 5.991 should not be read as giving the petitioner the right to request a review of findings and orders issued after jeopardy has attached in a delinquency proceeding. In other words, a petitioner does not have a right to request review of a “not guilty verdict” rendered by a referee following a bench trial in a delinquency proceeding.

The judge need not schedule a hearing to rule on a request for a review of a referee's recommendations. MCR 5.991(C).

### 13.5 Form and Time Requirements for a Request for Review

The request for review of either a referee recommendation or an order based on a referee recommendation must:

(1) be in writing;

(2) state the grounds for review; and

(3) be filed within seven days after the conclusion of the hearing or disposition forming the basis for review.

MCR 5.991(B)(1)–(3).

### **13.6 Time Requirement for Filing a Response to a Request for Review**

A party may file a written response within seven days after the filing of the request for review. MCR 5.991(B)(3).

### **13.7 Time Requirement for Judge's Decision**

Absent good cause for delay, the judge shall consider the request within 21 days after it is filed if the juvenile is in placement or detention. MCR 5.991(C).

### **13.8 Form of Relief**

MCR 5.991(E) states that the judge may affirm, modify, or deny the recommendation of the referee in whole or in part, on the basis of the record and the memoranda prepared, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

### **13.9 Standard of Review**

The judge shall deny the request for review unless:

(1) the judge would have reached a different result had she or he heard the case, or

(2) the referee committed a clear error of law which likely would have affected the outcome, or cannot otherwise be considered harmless.

MCR 5.991(D)(1)–(2).

### **13.10 Stay of Proceedings and Grant of Bail**

MCR 5.991(F) states that the court may stay an order, or grant bail to a detained juvenile, pending its decision on review of the referee's recommendation.

